



Response under 37 C.F.R. §1.116-  
Expedited Procedure Examining Group  
Art Unit 1773

DAC  
#

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Yamanaka et al.

Examiner: Kruer, K.

Serial No.: 08/855,905

Group: Art Unit 1773

Filed: May 14, 1997

Docket: 443-17

For: SYNTHETIC PAPER MADE OF  
STRETCHED POLYPROPYLENE FILM

Date: April 28, 2003

Assistant Commissioner for Patents  
Washington, D.C. 20231

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**PETITION UNDER 37 C.F.R. §1.181**

Sir.

Pursuant to 37 C.F.R. §1.181 and M.P.E.P §1002.02(c), it is respectfully petitioned that finality of the Office Action mailed January 27, 2003 be withdrawn as premature, for the following reasons.

The final Office Action mailed January 27, 2003 raised rejections under 35 U.S.C. §112, first paragraph, for the very first time in paragraphs 1 and 2 on page 2 thereof. Accordingly, a Request for withdrawal of finality of this Office Action as premature in accordance with M.P.E.P. §§706.07(c) and (d) was filed by the undersigned attorney and received by that Patent and Trademark Office on March 6, 2003.

05/06/2003 AWONDAE1 00000153 08855905

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CERTIFICATE OF MAILING 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope, addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Date: April 28, 2003

George M. Kaplan

A subsequent communication was mailed by the Patent and Trademark Office from the Supervisory Primary Examiner (SPE), Paul Thibodeau, denying the request on the grounds that these rejections under 35 U.S.C. §112, first paragraph had allegedly been raised in the previous Office Action mailed January 28, 2002 (Paper no. 27). SPE Thibodeau was contacted, by telephone, by the undersigned attorney who pointed out that this previous Office Action mailed January 28, 2002 did not raise any rejections under 35 U.S.C. §112, first paragraph.

SPE Thibodeau retrieved the Patent and Trademark Office file history for this application, and informed the undersigned attorney, during a subsequent telephone conference, that the Office Action mailed January 28, 2002 (Paper No. 27) apparently did raise such rejections under 35 U.S.C. §112, first paragraph. After comparing copies of the respective Office Actions, it was ascertained that the Office Action dated January 28, 2002 (Paper No. 27) mailed to the undersigned attorney was missing a page that had raised the rejections under 35 U.S.C. §112, first paragraph. A copy of the Office Action of January 28, 2002 ( Paper No. 27) that was received by the office of the undersigned attorney is enclosed; there are no rejections under 35 U.S.C. §112, first paragraph in this copy as received by the undersigned attorney.

As can be seen from the enclosed copy of this Office Action (Paper No. 27), the first page of substantive rejections begins with an objection to claim language, followed by a prior art rejection numbered paragraph 1. Accordingly, as SPE Thibodeau agreed, it would not be readily apparent to the undersigned attorney that a page was indeed missing from this Office Action.

The undersigned attorney then offered to, and conducted, a thorough, good faith search of his office file of the present application to ensure that such a "missing" page was never received and accidentally, inadvertently misplaced. The undersigned attorney even wrote to the Japanese attorney of Applicants to ascertain if this "missing" page might have been received and forwarded without a copy being retained for the undersigned attorney's file.

A thorough search of the office file of the undersigned attorney for this application turned up no such page; also enclosed is a copy of correspondence received from the Japanese attorney for Applicants to the undersigned attorney, documenting that no such "missing" page was ever forwarded, or included in correspondence to the Japanese attorney.

Accordingly, the undersigned attorney immediately telephoned SPE Thibodeau to report that a conscientious, good faith search of the undersigned attorney's file failed to turn up any such "missing" page, the only conclusion therefore being that such a page was never included with the previous Office Action mailed January 28, 2002 (Paper no. 27) by the Patent and Trademark Office.

SPE Thibodeau

(i) agreed finality of the present Office Action mailed January 27, 2003 should be withdrawn, but

(ii) stated that Applicants must first respond to the outstanding Office Action, before finality could be withdrawn.

The undersigned attorney pointed out finality of the present Office Action should be withdrawn before the Applicants must respond, to allow full opportunity to address all issues on the merits, including the rejections under 35 U.S.C. §112, first paragraph, amend claims and/or submit new evidence and/or arguments, if deemed necessary by Applicants.

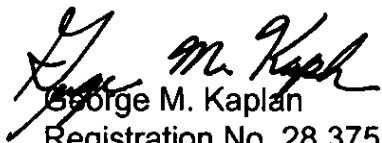
Accordingly, it is earnestly solicited

(i) finality of the present Office Action mailed January 27, 2003 be withdrawn, with

(ii) additional time being granted to Applicants to prepare and file a full response, on the merits, to all issues raised in this Office Action.

A petition fee of \$130 is enclosed by check in accordance with 37 C.F.R. §1.17(h). Please charge any deficiencies or credit any overpayment to Deposit Account no. 04-1121 (two additional copies of this page are enclosed).

Respectfully submitted,

  
George M. Kaplan  
Registration No. 28,375  
Attorney for Applicant(s)

DILWORTH & BARRESE LLP.  
333 Earle Ovington Blvd.  
Uniondale, NY 11553  
(516) 228-8484



The undersigned attorney pointed out finality of the present Office Action should be withdrawn before the Applicants must respond, to allow full opportunity to address all issues on the merits, including the rejections under 35 U.S.C. §112, first paragraph, amend claims and/or submit new evidence and/or arguments, if deemed necessary by Applicants.

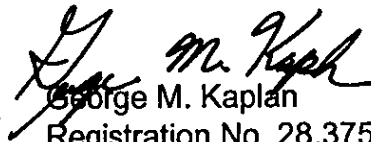
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Attorney for Applicant(s)

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(516) 228-8484



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<b>Office Action Summary</b>	Application No.	Applicant(s)	
	08/855,905	YAMANAKA ET AL.	
	Examiner	Art Unit	
	Kevin R Kruer	1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on 27 December 2001.

2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☐ Claim(s) 1-20 and 27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☐ Claim(s) 1-10 and 27 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All   b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: \_\_\_\_\_

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### ***Claim Objections***

Claim 1 is objected to because of the following informalities: the formatting of the claimed weight percentages is confusing. Specifically, it is confusing to what component each claimed weight percentage refers. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

1. Claims 1-20 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takashi et al. (Pat. No. 4,318,950) in view of European Patent 0 613 919 A1 (aka Ueda) and Ohba et al. (Pat. No. 5,233,924) for reasons of record.

### ***Response to Arguments***

1. Applicants' arguments filed December 27, 2001, have been fully considered but they are not persuasive.

Applicants argue that the prior art fails to teach that a sheet's antistatic properties will be enhanced when a composition comprising the claimed antistatic agent is oriented. The examiner believes Applicant is attempting to demonstrate unexpected results with respect to the affect of orientation on surface resistivity. If such is the case, then applicant has failed to make a showing. Specifically, applicant has failed to compare the closest prior art (aka a synthetic paper as taught in Takahashi comprising an anti-static agent other than the claimed polyetheresteramide) to the claimed invention.

Applicants further argue that Ueda fails to show certain features of applicant's invention. It is noted that the features upon which applicant relies (i.e., extrusion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

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specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, a method of making a product does not patentably distinguish a product from the prior art unless it can be shown that the method of making inherently results in a materially different product. No such showing has been made in the present application. It is also noted that Takashi, not Ueda, is the primary reference. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The examiner agrees that Ueda does not teach that the composition may comprise the claimed fillers or that the composition should be opaque. However, the examiner would like to point out that Ueda was never relied upon for such teachings. Rather, Takashi (aka the primary reference) was relied upon to teach the addition of filler to a propylene composition for the purpose of making an opaque synthetic paper. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that Takashi teaches neither the claimed antistatic filler nor the amount of antistatic filler that should be added to the propylene composition. The examiner points out that the rejection never relied upon Takashi for such a teaching.

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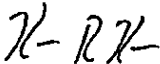
Rather, Ueda teaches the amount of polyetheresteramide containing aromatic rings that need to be added to a composition in order to obtain desirable antistatic effects. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).


Applicant further argues that Ohba is not related art. The examiner respectfully disagrees. The courts have held that that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The examiner maintains the position that Ohba is in the same field of endeavor as the present claims-aka synthetic paper.

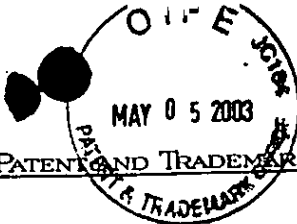
Applicant's declarations have been previously considered. A full discussion of each declaration can be found in the previous office actions.

#### Conclusion

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is (703) 305-0025. The examiner can normally be reached on Monday-Friday from 7:30a.m. to 4:30p.m.

  
Kevin Kruer  
Patent Examiner

  
BLAINE COPENHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/855,905	05/14/1997	MASAAKI YAMANAKA	443-17	2320

7590 01/28/2002  
ROCCO S BARRESE  
DILWORTH AND BARRESE  
333 EARLE OVINGTON BLVD  
UNIONDALE, NY 11553

EXAMINER

KRUER, KEVIN R

ART UNIT PAPER NUMBER

1773

27

DATE MAILED: 01/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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 MAY 15 2003  
 PATENT & TRADEMARK OFFICE

# Office Action Summary

Application No.	Applicant(s)	
08/855,905	YAMANAKA ET AL.	
Examiner	Art Unit	
Kevin R Kruer	1773	

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## Status

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- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-20 and 27 is/are pending in the application.
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- 6) ☐ Claim(s) 1-10 and 27 is/are rejected.
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- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

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- 9) ☐ The specification is objected to by the Examiner.
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## Priority under 35 U.S.C. §§ 119 and 120

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 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
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## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |



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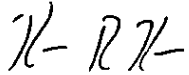
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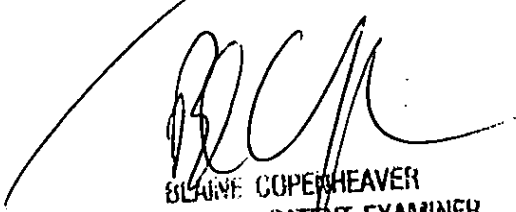
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Kevin Kruer  
Patent Examiner

  
ELAINE COPERHEAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700





The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

## INFORMATION ON HOW TO EFFECT DRAWING CHANGES

### 1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

### 2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

#### Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a)

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.



Creation date: 12-22-2003  
Indexing Officer: NDUBOSE - NEFERTITI DUBOSE  
Team: OIPEBackFileIndexing  
Dossier: 08855905

Legal Date: 05-29-2003

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2	REM	15
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Total number of pages: 19

Remarks:

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